IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 133 OF 2002

Yashwant Baban Chavan)
Convicted Prisoner No.C-12150)
(Yeravada Central Prison))
Pune-411 006.)...Appellant
(Orig.Accused)

Versus

The State of Maharashtra ...Respondent

Ms. D.M. Shah (appointed) for the appellant.
Smt. V.R. Bhosale, Additional Public Prosecutor, for the State.

CORAM: **V.G. PALSHIKAR, Ag. C.J., &**
SMT. NISHITA MHATRE, J.
DATE: **AUGUST 30, 2006**.

ORAL JUDGMENT (Per Palshikar, Ag. C.J.)

This appeal by original accused is directed against the judgment and order dated 30th June, 2001, passed in Sessions Case No. 97 of 2000, by the IV Additional Sessions Judge, Satara, sentencing the accused to suffer imprisonment for life under Section 302 of the Indian Penal Code.

2. The appellant has assailed the order on various grounds mentioned in the memo of appeal as also canvassed before us by the

learned Advocate appointed to represent the appellant.

3. With the assistance of the learned Advocate for the accused and the learned Additional Public Prosecutor, we have scrutinised the record and re-appreciated the evidence on record.

3. The prosecution case, briefly stated, is that the accused was duly married to Rohini, and both were working as labourers in agricultural fields of different people and, whilst so functioning as agricultural labourers, they were shifting from one farm to another. The accused started suspecting the character of his wife Rohini. He thought that she is having illicit relationship with other labourers on the farm of which there used to be quarrels between them.

4. In the morning on 12th March, 2000, the wife Rohini was ill and, therefore, did not go out and did not accompany the accused. He, therefore, started abusing her, questioning her fidelity and alleging illicit relationship with one Raju Lonkar. The accused sent his daughter, P.W.4, around 2.00 p.m. to bring bhel from Sakharwadi. She returned after buying the bhel and met the accused on the road. He took the packet, kept the same on the bicycle and asked his daughter to

accompany him for eating pedha. She refused to go along with him. While P.W. 4 was approaching home, one Suvarna Chavan (P.W.5) met her and told her that the accused had beaten her mother i.e. deceased Rohini. When P.W. 4 arrived home, she saw her mother lying on a quilt and was smeared with blood and an axe was lying near about. Neighbours gathered and the matter was reported to the police. Police started investigation, arrested the accused, completed the investigation and convicted the accused under Section 302 of the Indian Penal Code for causing intentional death of Rohini by assaulting her with an axe. In due course, the matter was committed to Sessions and was allotted to IV Additional Sessions Judge, Satara, before whom the prosecution examined 12 witnesses to prove its case and the learned trial Judge, on appreciation of the evidence as was led before him, came to the conclusion of guilt and convicted the accused as aforesaid. It is this judgment which is assailed in this appeal by the accused.

5. The learned advocate appearing on behalf of the accused submitted that all the 12 witnesses examined by the prosecution. Four witnesses having turned hostile and their evidence is consequently of no use to the prosecution. Of the remaining witnesses, the testimony

of P.W.5 is wholly trustworthy because she was a child when the incident occurred and there are lot of contradictions in her statement. According to the learned Advocate, there is no eye witness and the circumstances proved on record are grossly inadequate to sustain an order of conviction. These submissions were stoutly opposed by the learned Additional Public Prosecutor. According to him, every link in the chain of circumstances is proved by the prosecution and that has been rightly appreciated by the learned trial Judge. His judgment is perfect and, therefore, need not be interfered with.

6. We have to appreciate these rival contentions and in the light of the evidence as re-appreciated by us.

7. Jagdish Ganpat Kadam (P.W.1) is a panch witness who has given contrary versions about execution of the panchanama and the learned Additional Sessions Judge has disbelieved the panch witness. We had seen the reasoning of the learned trial Judge and we agree with his finding that P.W.1 is not reliable.

8. Ananda Bajirao Jagtap (P.W.2) was declared hostile. He states that as he did not stick to his statement made to the police

regarding attachment or seizure of axe, quilt and mixed earth from the spot. Though the panch has turned hostile, the effect of these seizures cannot be denied as it has been deposed to by the Investigating Officer also. In any event, beyond proving such seizure, this witness is of no use.

9. Dhananjay Ganpat Aadake (P.W.3) is the brother of the deceased Rohini and he has told the Court how the accused harassed the victim. About this aspect, there is no doubt.

10. Archana Yashwant Chavan (P.W.4) is the daughter of the victim and accused. She is the person who saw the accused and the deceased together lastly. She was told to go out and bring bhel by the father i.e. accused. She returned after 15 minutes and saw her father going away. She was told by P.W.5 that there has been some quarrel and beating by her father to the victim. On entering the house, she found that her mother was bleeding, lying on a quilt and an axe near about. She is, therefore, the witness who has discovered immediately the assault on the mother. She is simultaneously not an eye witness. She saw her father going out and did not notice any bloodstains on the clothes of her father. It was on her complaint that the investigation

started.

11. Suvarna Ananda Chavan (P.W.5) is the girl who told P.W.4 about the quarrel. A perusal of the deposition of this witness goes to show that the witness was child and, therefore, there were several contradictions in her deposition. Her evidence, therefore, is not safe to be relied.

12. Satish Dattatraya Mane (P.W.6) is the Sub-Inspector who took the message of the crime being committed and prepared some panchanama. P.W. 12 is the Investigating Officer.

13. Surekha Jaywant Sonawane (P.W.7) states that he saw the accused and P.W. 4 talking on the road. Her evidence is replete with contradictions and even if it is accepted as it is, all that is proved by the testimony is that the accused and P.W.4 were seen talking on the road. This aspect is not in dispute and there is no reason why it cannot be accepted. It is not proved that the accused was the person who assaulted the wife. P.Ws. 8, 9 and 10 are all hostile witnesses. They were all panchas and throw no light on the circumstances attending the death of the deceased. Mangal Anukush Mote (P.W. 11) is the

Magistrate who asserted competency of P.W.5 as a witness. Assuming it to be so, factually the evidence of P.W.5 is full of contradictions and is not reliable. It is on the basis of such evidence that the learned trial Judge convicted the accused under Section 302 and sentenced him to suffer rigorous imprisonment for life.

14. The learned Judge heavily relied on the report of the Chemical Analyser which established that there was human blood of "O" Group on the saree, petticoat, blouse, quilt, axe and earth found at the scene of offence and the blood of the deceased was of "O" group. Looking to the nature of the injury and the force of assault, it is obvious that some blood spill on to the body of the person committing the crime. No such bloodstains were found on the clothes of the accused. Admittedly, axe which was used as a weapon of offence was lying at the scene of offence was duly seen by the police. Yet, no investigation is undertaken to link the axe to the accused which could have been easily done by finger printing the axe and the accused. The comparison would be proved beyond doubt with the axe handled by the accused. Merely because the accused had a suspicious character it cannot be concluded in various certainty that it was he who had assaulted his wife. The cumulative effect of four or five witnesses being heavily, two

being believable with lack of material evidence such as finger printing the axe and the accused , existence of blood group of the victim on the clothes of the accused, lack of medical evidence, a doubt arises in the minds of a reasonable prudent man that it is possible that the assault was committed by someone else. The motive is not adequate to conclude irresistibly that it was because of his suspicious character the accused committed the murder of Rohini. In our opinion, it is a case where reasonable doubt regarding commission of the offence by the accused arises and, therefore, the benefit of doubt must go to the accused.

15. In the result, therefore, the appeal succeeds and is allowed. The judgment and order of conviction and sentence is set aside. The accused is in jail. If he is not required for any other purpose, he is liable to be released forthwith.